

REMARKS

No new matter has been added.

The Office Action mailed August 21, 2007, has been received and reviewed. Claims 1 through 11 are currently pending in the application. Claims 1 through 11 stand rejected. Applicants have amended claims 1, 3, 5 and 7 and respectfully request reconsideration of the application as amended herein.

35 U.S.C § 101 Non-Statutory Subject Matter

Claims 1-6 were rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Applicants respectfully disagree.

The Office Action alleges:

Claims 1-6 are directed to signal that is not a physical embodiment. To be a statutory claim, the claimed subject matter must convey a process, machine, manufacture, or composition of matter, which are not the characteristic of a communication signal. Claiming nonfunctional descriptive material such as a signal on a carrier wave does not make the claims statutory. Broadcast session on a broadcast transmission channel and processing payload data of the broadcast session are just manipulation of data. Claiming a signal on a carrier wave could never be statutory. *Claims 1-6 do not require any physical transformation* and the invention as claimed does not produce a useful, concrete, and tangible result. (Office Action, p. 2; emphasis added).

Applicants respectfully assert that Applicants' independent claims 1, 3 and 5 specifically recite, in part, a "*method* comprising" which clearly falls within the 35 U.S.C. §101 statutory class of a "process." Furthermore, the allegation that Applicants' independent claims 1, 3 and 5 claim a "signal" is unfounded since each of independent claims 1, 3 and 5 recite a preamble of "a method" and include claim elements which are process steps of a method. Regarding the allegation that "[c]laims 1-6 do not require any physical transformation," Applicants respectfully disagree. For example, Applicants' claim 1 recites, in part, "a method comprising" "generating a broadcast session for transmission ...; interleaving broadcast overhead information ...; and transmitting"

Therefore, the rejection of claims 1-6 as being unpatentable under 35 U.S.C. §101 is improper. Accordingly, Applicants respectfully request the rejections be withdrawn.

35 U.S.C. § 102 Anticipation Rejections

Anticipation Rejection Based on Gagnon (EP 1 024 661 A2).

Claims 3 and 4 stand rejected under 35 U.S.C. § 102 as being anticipated by Gagnon (EP 1 024 661 A2), (hereinafter "Gagnon").

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." M.P.E.P. § 2131 (Aug. 2001) (*quoting Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987)). "The identical invention must be shown in as complete detail as is contained in the . . . claim." *Id.* (*quoting Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1051, 1053 (Fed. Cir. 1987)). In addition, "the reference must be enabling and describe the applicant's invention sufficiently to have placed it in possession of a person of ordinary skill in the field of the invention." *In re Paulsen*, 30 F.3d 1475, 1479, 31 USPQ2d 1671, 1673 (Fed. Cir. 1994).

Applicants respectfully submit that claims 3 and 4 are not anticipated by Gagnon because the reference does not disclose all the claim limitations of the presently claimed invention as set forth above.

Applicants submit that Gagnon does not disclose the claim limitations of "wherein the *SDP message provides information for decoding payload data of the broadcast session*". (Currently Amended Independent Claim 3).

The Office Action in the Response to Arguments section, the Examiner agrees with Gagnon's disclosure of the limited use of the SDP message. Specifically, the Office Action states:

... The Examiner interprets the claims as follow: The *SDP message includes a number of fields*, which are assembled into a single record or file *to provide information on available services* (corresponding to SDP message assembled or interleaved with broadcast session, paragraphs 36 and 83-88). (Office Action, p. 8; emphasis added.)

In distinct contrast, Applicants' invention as currently amended in independent claim 3 recites, in part, "the *SDP message provides information for decoding payload data of the broadcast session*" which is not disclosed in Gagnon. In distinct contrast, Gagnon transmits **information** that is used to build a structure **independent of the broadcast session**, namely Gagnon's program guide. The program guide includes clips of multiple broadcast channels as well as the structure to present the programming choices. In Gagnon, the transmitted programming guide information has **no** bearing upon the **decoding** of any of the payload data of the broadcast channels but is merely provided as a completely independent source of information. A user makes a selection from the program guide and then begins receiving the broadcast. In short, the transmission or non-transmission of Gagnon's program guide information has no bearing upon **decoding** payload data of any broadcasting session. Furthermore, since the program guide is independent of actual payload data of the broadcast session, Gagnon cannot and does not disclose "the *SDP message provides information for decoding payload data of the broadcast session*" as claimed by Applicants.

While Gagnon continues to expound upon fields and information content of the SDP+ record (e.g., start and end times of the broadcast, the repeat times of the broadcast, addresses of Internet web pages that provide additional information regarding the specific program item, etc.), the SDP+ record clearly further enhances the **independent** program guide of Gagnon rather than "the *SDP message provides information for decoding payload data of the broadcast session*" as claimed by Applicants.

Furthermore, Applicants respectfully submit that that Gagnon's disclosure of providing a program guide to aid in broadcast session selection does not disclose "the *SDP message provides information for decoding payload data of the broadcast session*" as claimed by Applicants. Additionally, Gagnon discloses packetized data used to provide a programming guide and does not deliver an actual broadcast session. The additional citation to paragraphs 83-88 expounds further on the use of SDP records to create the program guide. Neither citation indicates that Gagnon provides anything but a program guide which is clearly not a "*broadcast session*."

Applicants submit that since Gagnon does not disclose all of the limitations of Applicants' invention as claimed, Gagnon cannot anticipate Applicants' invention as claimed under 35 U.S.C. § 102. Therefore, Applicants respectfully request that the rejections be withdrawn.

Claim 4 is allowable as depending directly from allowable independent claim 3.

35 U.S.C. § 103(a) Obviousness Rejections

Obviousness Rejection Based on Gagnon and Further in View of U.S. Patent No. 6,510,515 to Raith

Claims 1, 2, and 5-11 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Gagnon and further in view of Raith (U.S. Patent No. 6,510,515 hereinafter "Raith"). Applicants respectfully traverse this rejection, as hereinafter set forth.

To establish a *prima facie* case of obviousness the prior art reference (or references when combined) **must teach or suggest all the claim limitations**. *In re Royka*, 490 F.2d 981, 985 (CCPA 1974); *see also* MPEP § 2143.03. Additionally, there must be "a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements" in the manner claimed. *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1742, 167 L.Ed.2d 705, 75 USLW 4289, 82 U.S.P.Q.2d 1385 (2007). Finally, to establish a *prima facie* case of obviousness there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986). Furthermore, the reason that would have prompted the combination and the reasonable expectation of success must be found in the prior art, common knowledge, or the nature of the problem itself, and not based on the Applicant's disclosure. *DyStar Textilfarben, GmbH & Co. Deutschland KG v. C. H. Patrick Co.*, 464 F.3d 1356, 1367 (Fed. Cir. 2006); MPEP § 2144. Underlying the obvious determination is the fact that statutorily prohibited hindsight cannot be used. *KSR*, 127 S.Ct. at 1742; *DyStar*, 464 F.3d at 1367.

The 35 U.S.C. § 103(a) obviousness rejections of claims 1, 2 and 5-11 are improper because the elements for a *prima facie* case of obviousness are not met. Specifically, the rejection fails to meet at least the criterion that the prior art references must teach or suggest all the claim limitations. Applicants submit that any proposed combination of

Gagnon in view of Raith does not and cannot establish a *prima facie* case of obviousness under 35 U.S.C. § 103 regarding the presently claimed invention of amended independent claims 1, 5, 7, and claims 2, 6, 8-11, depending therefrom because, at the very least, the cited prior art does not teach or suggest all the claim limitations of the presently claimed invention as set forth hereinabove.

Applicants submit that the proposed combination of Gagnon and Raith does not teach or suggest the claim limitations of “*interleaving broadcast overhead information with the broadcast session*, wherein the *broadcast overhead information provides information for decoding payload data* of the broadcast session” (Currently Amended Independent Claim 1) and “*receiving [] a [] (SDP) message interleaved with a broadcast session ... wherein, the SDP message provides information for decoding payload data* of the broadcast session”. (Currently Amended Independent Claims 5 and 7).

Generally, neither Gagnon nor Raith teach or suggest decoding payload data using interleaved broadcast overhead information in a broadcast session. The Office Action concedes:

Gagnon does not explicitly teach wherein the broadcast overhead information provides information for processing payload data of the broadcast session. (Office Action, p. 5).

The Office Action then supplements the lack of teaching or suggestion of Gagnon by citing Raith. However, Raith, according to the Office Action, teaches away from interleaving broadcast overhead information with payload data by specifically teaching of payload data on a first broadcast channel and a separate broadcast control channel (BCCH) for transmitting an encryption key for processing the payload data. (Office Action, p. 5).

Applicants submit that since neither Gagnon nor Raith, either individually or in any proper combination, teach or suggest all of the limitations of Applicants’ invention as claimed, these references cannot render obvious Applicants’ invention as claimed under 35 U.S.C. § 103. Therefore, Applicants respectfully request that the rejections be withdrawn.

Independent claims 5 and 7 are allowable for the same reasons given above for claim 1.

Claims 5, 6 and 8-11

The Office Action similarly alleges teachings by Gagnon and Raith as described above. Applicants respectfully disagree with the Office Action's characterization of Gagnon and Raith.

Applicants herein sustain the above proffered arguments, namely that Gagnon does not teach or suggests "*receiving [] a [] (SDP) message interleaved with a broadcast session ... wherein, the SDP message provides information for decoding payload data of the broadcast session*" as claimed by Applicants in amended independent claims 5, 7 and claims 6, 8-11 depending therefrom.

Furthermore, since both Gagnon and Raith are silent regarding "*receiving [] a [] (SDP) message interleaved with a broadcast session ... wherein, the SDP message provides information for decoding payload data of the broadcast session*" as claimed by Applicants, the cited references, namely Gagnon in view of Raith, do not and cannot establish a *prima facie* case of obviousness under 35 U.S.C. § 103 regarding the presently claimed invention of amended independent claims 5, 7 and claims 5, 6, and 8-11 depending therefrom.

Applicants submit, and the Office Action concedes, that since neither Gagnon nor Raith, either individually or in any proper combination, teach or suggest all of the limitations of Applicants' invention as claimed, these references **cannot** render obvious Applicants' invention as claimed under 35 U.S.C. § 103. Therefore, Applicants respectfully request that the rejections be withdrawn.

CONCLUSION

Claims 1-11 are believed to be in condition for allowance, and an early notice thereof is respectfully solicited. Should the Examiner determine that additional issues remain which might be resolved by a telephone conference, he is respectfully invited to contact Applicants' undersigned attorney.

Respectfully submitted,

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